

1 respondent was represented by Robert R. Binzer, Deputy Prosecuting
2 Attorney. Michael E. O'Brien recorded the proceedings.

3 Having heard or read the testimony, having examined the exhibits,
4 and having considered the post-hearing briefs and contentions of the
5 parties, the Board makes these

6 FINDINGS OF FACT

7 I

8 Inland Foundry Company, appellant, is a proprietorship operating a
9 gray iron foundry in Mead, Spokane County, Washington

10 II

11 Spokane County Air Pollution Control Authority, respondent, is a
12 municipal corporation activated under the Washington Clean Air Act,
13 chapter 70-94 RCW. The geographical jurisdiction of respondent is
14 co-extensive with the boundaries of Spokane County.

15 III

16 In 1954, appellant commenced business with five employees. By
17 1982, appellant had expanded to 21 employees and served a market area
18 including the Pacific Northwest states and Alaska.

19 IV

20 The central piece of process equipment at appellant's facility is
21 a cupola furnace. The cupola is charged with scrap metal and coke.
22 During combustion, the metal is melted and collected at the bottom
23 where it is tapped periodically.

24 The operation of the cupola produces air contaminants including
25 gases, dust, fumes, and smoke. In the cupola, scrap is used, oil vapor is

26 FINAL FINDINGS OF FACT,
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1 also emitted. Appellant seeks to use only clean scrap to avoid oil
2 vapor.

3 V

4 In the 1970's, appellant began experiencing air pollution
5 problems. Appellant proposed using a wet scrubber to control its
6 emissions. The design was not acceptable to respondent. In 1975,
7 appellant installed a baghouse as an emission control device, which
8 was acceptable to respondent.

9 VI

10 Some residents downwind from appellant's foundry find the
11 emissions burdensome to their enjoyment of life and their property.
12 Smoky emissions occasionally envelop their properties and interfere
13 with their ordinary outdoor activities. Their views during such times
14 are obscured. They also testified to headaches, upset stomachs,
15 burning eyes, coughs, raspy throats, and/or disagreeable odors.

16 VII

17 Appellant's employees and some residents do not consider the
18 emissions overly burdensome. They report no ill effects from contact
19 with the emissions.

20 VIII

21 In 1980, appellant began experiencing increasing air pollution
22 problems again. After some dealings with respondent, appellant
23 decided to engage outside experts to advise it of its air pollution
24 problems and possible solutions.

The consultants tested the emissions at the exhaust from the baghouse connected to the cupola. The test results for the emissions studied showed the presence of particulates, hydrocarbon, and sulfuric acid emissions.

The consultants proposed a four-step strategy to control the opacity emissions from the cupola. The first step was to control the process with some new equipment and training employees in the operational procedures to be used on the burner. The second step was to install another baghouse to assist the existing baghouse. The third step was to redesign the water quench system to produce smaller droplet size and control the water injection rates. The fourth step, the injection of reactive chemicals into the quench system, would be used only if the first three steps failed to reduce opacity successfully. It is the most costly alternative for opacity control under the proposed strategy, according to the appellant. Appellant estimates that the fourth step alone would cost about \$155,000 to implement properly.

Between April 27 and June 23, 1962, respondent issued 28 notices of violation for opacity and/or odor.

By letter dated June 17, 1962, appellant made application for variance from Sec 1015 6 82, 6 83, and 6 84 of Regulation I. The

1 application came for hearing before respondent's Board of Directors on
2 July 1 and 8, 1982. At the hearing appellant, members of the public,
3 and respondent's staff presented their respective positions. At the
4 conclusion of the hearing, the Board decided to deny the application,
5 to continue surveillance of the plant, but to prosecute any violations
6 observed in the interim only if the plant is not in compliance with
7 the regulation on or before January 2, 1983. The denial of the
8 variance was appealed to this Board.

9 XIII

10 Appellant presented evidence showing that about 25 jobs and a half
11 million dollar annual payroll resulted from its operation. Over a
12 period of a year, about \$100,000 in taxes were paid and \$400,000 of
13 goods were purchased. An estimated 75 to 85 people have some economic
14 dependence on appellant.

15 XIV

16 Appellant's evidence shows that the cost of promptly achieving the
17 fourth step of its strategy, \$155,000, is a substantial cost to it
18 given its capitalization, present long-term debt, and annual profit
19 experiences.

20 XV

21 Appellant has completed the first three steps of its strategy at a
22 cost of between \$25,000 and \$35,000. The results of its efforts have
23 not been fully evaluated by it, however, although it expects success.
24 Appellant wants a variance to allow it flexibility if step four is
25 required. Although it initially sought a three-month time period for

1 the first step, appellant is not to obtain that the election would be

2 the case appears

3 If appellant was present at the first step, it would also

4 consider an alternative to the original, as it is a low cost alternative
5 instead of a more expensive design. The cost of such a design would range

6 between \$100,000 and \$250,000

7 The decision to add more pollution control equipment or to replace
8 the furnace had not been made by appellant. The time for installation
9 of the equipment is not essential.

10 (b)

11 Based upon respondent's monitoring, appellant's emissions do not
12 violate the pertinent ambient air standard. The emissions do not
13 however, pose a threat of enforcement based upon the emission
14 limitation of section 6.02 and 6.04 of Chapter 1.

15 (c)

16 Section 6.04 of regulation 1.04 is included for any person to
17 cause or allow the emission of any air contaminant, including dust,
18 dust fumes, and smoke, into the outdoor atmosphere for more than
19 three minutes in any one hour that is in excess of greater than 10
20 percent opacity.

21 Section 6.04 of regulation 1.04 provides:

22 effective control apparatus and measures shall be
23 installed and operated to reduce odor-bearing
24 gases and particulate matter emitted into the
25 atmosphere to a reasonable minimum.

26 The staff of control officer has a obligation
27 to determine whether the building is

1 equipment be closed and ventilated in such a way that
2 all the air, gas, and particulate matter are
3 effectively treated for removal or destruction of
4 odorous matter or other air contaminants before
5 emission to the atmosphere.

6 Section 6.08 of Regulation I provides for an exemption from
7 penalties for exceeding the emission limitations of Regulation I if
8 the exceedence is the direct result of unavoidable upset conditions or
9 unavoidable and unforeseeable breakdown of equipment or control
10 apparatus, the event is reported to respondent on the next working
11 day, and a report is submitted if requested by respondent. Upon
12 receipt of the report, respondent's control officer may allow
13 continued exempt operation under certain conditions, or may require
14 that the plant curtail or cease operations under certain conditions.

15 Article III of Regulation I provides for a variance from the
16 provisions of Regulation I:

17 A. Any person who owns or is in control of any plant,
18 building, structure, establishment, process or
19 equipment, including a group of persons who owns or
20 controls like processes or like equipment, may apply to
21 the Board for a variance from rules or regulations
22 governing the quality, nature, duration, or extent of
23 discharges of air contaminants. The application shall
24 be accompanied by such information and data as the
25 Board may require. The Board may grant such variance,
26 but only after public hearing or due notice, if it
27 finds that:

- 1 The emissions occurring or proposed to occur do not
endanger public health or safety, and
- 2 Compliance with the rules or regulations from which
variances is sought would produce serious hardship
without equal or greater benefits to the public.

B. No variance shall be granted pursuant to this section
until the Board has considered the relative interests

1 of the applicant, other owners of property which is or is to be
2 affected by the discharge, and the general public.

3 C Any variance or renewal thereof shall be granted within
4 the requirements of Subsection A and for a fixed period
5 and under conditions consistent with the reasons
6 therefore, and within the following limitations:

7 1 If the variance is granted on the grounds that
8 there is no practicable means known or available
9 for the adequate prevention, abatement or control
10 of the pollution involved, it shall be only until
11 the necessary means for prevention, abatement or
12 control become known and available and subject to
13 the taking of any substitute or alternate measure
14 that the Board may prescribe.

15 2 If the variance is granted on the ground that
16 compliance with the particular requirements or
17 requirement from which variance is sought will
18 require the taking of measures which, because of
19 their extent or cost, must be spread over a
20 considerable period of time, it shall be for a
21 period not to exceed such reasonable time, as in
22 the view of the Board, is requisite for the taking
23 of the necessary measures. A variance granted on
24 the ground specified herein shall contain a
25 timetable for the taking of action in an
26 expeditious manner and shall be conditioned on
27 adherence to such timetable.

3 If the variance is granted on the ground that it is
justified to relieve or prevent hardship of a kind
other than that provided for in Item 1 and 2, it
shall be for not more than one (1) year.

4 A variance or renewal shall not be a right of the
5 applicant or holder thereof but shall be at the
6 discretion of the Board. Any applicant who is
7 affected by the denial of the terms and conditions of
8 the granting of an application for a variance or
9 renewal of the variance by the Board, may obtain
10 judicial review thereof only under the provisions of
11 Chapter 43.11B RCW.

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XVIII

Any Conclusion of Law which should be deemed a finding of Fact is hereby adopted as such.

From these Findings of Fact come these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of this proceeding

II

Appellant carries the burden of proving, by a preponderance of the evidence, that the denial of the variance application was in error. At issue in this matter are the particular requirements of Article III A. which provide.

The Board may grant such variance, but only after public hearing or due notice, if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health or safety; and
2. Compliance with the rules or regulations from which variances is sought would produce serious hardship without equal or greater benefits to the public.

If the foregoing findings are made in favor of granting a variance, respondent's Board must nonetheless weigh the effect of the discharges on the various interests involved.

No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharge, and the general public.

1 Article III.B.

2 A variance is not a right of the appellant and is within the
3 discretion of respondent's Board of Directors.

4 III

5 The evidence is conflicting on whether the emissions resulted in
6 air pollution of such characteristics and duration as would
7 unreasonably interfere with enjoyment of life and property of
8 appellant's employees and nearby residents. Assuming that either
9 party prevailed on such showing, the criterion to be met involves
10 danger to public health and safety.

11 Turning to the criterion at issue, we note that the evidence on
12 the part of both parties is essentially of the same quality. On
13 balance, however, appellant showed by a preponderance of the evidence
14 that the emissions occurring or proposed to occur presented to
15 apparent "endangerment" to public health or safety, with respect to
16 the exigencies of the limitations of Sections 6.01 and 6.02 of Regulation

17 T¹

18 IV

19 With respect for the criterion related to serious hardship,

20
21 1 Respondent, in its order denying the variance, effectively, allows
22 appellant to continue operating until January 2, 1983. If the
23 foundry comes into compliance during that period or before
24 that date, the fines and other actions occurring during that period
25 would not be pursued. Under a variance, appellant would not be
26 subject to the fines and other actions from respondent unless it
27 did not comply with the variance terms. While the former approach
28 compels the intended result, it must assume that the emissions
29 during that period do not endanger public health and safety.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

28 PCB# 82-120

1 appellant did not prove that it would suffer serious hardship if it
2 were required to comply with Section 6.04 of Regulation I. Pather,
3 its evidence is directed at the difficulties involved in complying
4 with Section 6.02.

5 The cost of complying with the first three steps of the compliance
6 schedule is not pressed as a serious hardship. Appellant has
7 completed them but is not certain if the equipment will perform
8 satisfactorily, so it pursues a variance. The absence of a serious
9 hardship for the first three steps cannot support a variance.

10 Looking then to the fourth and most costly step of the strategy,
11 it is apparent the appellant does not now intend to proceed with
12 design and installation of an injection system if the first three
13 steps fail. Rather, it intends to make a decision whether to proceed
14 based upon the results of the first three steps.² The decision will
15 be influenced by the success of the strategy taken, or by the
16 alternatives available if the strategy is not successful. When
17 appellant decides to add pollution equipment or to replace its
18 furnace, it will then be more appropriate to consider whether the
19 proposed measures, because of their extent or cost, must be spread
20 over a considerable period of time, and a variance considered. Under
21 the circumstances, the cost of the fourth step of the strategy has no
22 relevance to the question as to hardship resulting from implementation
23 of the first three steps. The granting of a variance would be
24

25 2 If those steps are successful, respondent has indicated that it
26 would not prosecute certain past alleged violations

1 pressure since appellant is not a large firm, which has not raised it at
2 this time. Appellant has made no commitment which would result in a
3 serious hardship to it.

4
5 Appellant did not prove that compliance with Section 6.03 of Regulation I
6 would produce serious hardship to it without greater benefits to the
7 public.

8
9 In making its decision, respondent's board of directors considered
10 the relative interests of the applicant, other owners of property
11 affected and likely to be affected by the discharges, and the general
12 public.

13
14 Section 6.03 of Regulation I is an authorized reporting provision
15 which owners or operators can use to avoid penalties for having
16 exceeded any limits established by that legislation. The section
17 establishes no emission or other limits which could merit in-
18 penalties. Consequently, a variance from the section is not
19 appropriate.

20
21 Appellant did not show that respondent's decision was wrong.
22 Accordingly, the denial of the variance application should be affirmed.

23
24 By motion, appellant contends that Section 6.03 of Regulation I is
25 "void for vagueness." In this matter (the application for a variance)

1 from Section 6.04, among others) the provision is not being enforced
2 against appellant. It is appellant which seeks to be excused from
3 complying with that section under other provisions of the regulation.
4 Our view on the validity of Section 6.04 would be more appropriately
5 addressed in an enforcement context, rather than in this variance
6 proceeding.³

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8 Any finding of fact which should be deemed a Conclusion of Law is
9 hereby adopted as such

10 From these Conclusions, the Board enters this
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21 3. Other pending cases to which this motion is also addressed include
22 PCHB Nos 82-61, 82-91, 82-92, 82-140 to 144, 82-146, 82-147,
23 82-149, 82-165, and 82-166
24
25

ORDER

The decision of the Spokane County Pollution Control Authority
is affirmed.

DONE this 3rd day of January, 1983

WALTER J. QUINN, CLERK

David A. Heera
SHERIFF BY PA, CLERK

Wayne Rothrock
CHAIRMAN

John Faulk
VICE CHAIRMAN